

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19125
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On November 4, 2005, the Revenue Operations Division (RevOp) of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for a refund of Idaho individual income tax in the amount of \$3,474 for the period ending December 31, 1997.

The taxpayer filed a timely protest and petition for redetermination of the refund denial. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On March 28, 2005, RevOp received the taxpayer's 1997 Amended Idaho Individual Income Tax Return. The return was submitted for processing, and a computer-generated letter was mailed to the taxpayer. The letter advised the taxpayer the refund shown in the return was being denied because the time to claim a credit or refund had expired.

The taxpayer appealed, and a deficiency notice was mailed to complete the requirements for processing a protest. The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review, and a letter advising her of her rights regarding the appeal was sent.

Idaho Code § 63-3072(c) provides for a limit on the time to claim a refund of overpaid income taxes. Idaho Code 63-3072 in pertinent part states:

63-3072. Credits and refunds. (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the

taxpayer.

(b) The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.

(c) Except as provided in subsection (e) of section 63-3035, Idaho Code, **a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.** (Emphasis added.)

The taxpayer did not file the claim for credit or refund until March 28, 2005, when she filed the amended return. The time allowed for claiming a refund or credit expired on April 15, 2001.

The taxpayer's accountant/return preparer (accountant) wrote the letter of appeal asking for consideration stating:

The State Tax Commission originally accepted the filed Form 40X and then requested that the taxpayer resubmit her refund claim using a more current Form 40. As the State Commission originally accepted the Form 40X, the corrected Form 40 should be accepted as timely filed. Further, due to incomplete and missing information on the original Form 40 the corrected Form 40 has been filed.

The records show the Tax Commission received the taxpayer's Amended Idaho Individual Income Tax Return for tax year 1997 on November 13, 2003, more than two years after the time allowed for claiming a credit or refund. Because the amended return was on a form that could not be processed through the Tax Commission's processing system, the accountant was asked to resubmit the amended return on a form that was in current use. The accountant complied with the request.

The request for refund submitted on the proper form was received on March 28, 2005.

The Tax Commission has reviewed the taxpayer's 1997 original federal and state returns, the amended Idaho return, and the documents supporting the change to the federal adjusted gross income reported in the original returns. It was noted the present accountant is the same accountant who prepared the original returns. A letter from the Controller of the State of [Redacted], dated November 3, 1999, explained the \$66,989 of income reported as Trustee Fees in the original 1997 return should have been reported as principal distributions.

In his letter of appeal, the accountant advised that the taxpayer had been ill since 2000 and had been on large doses of pain medication causing an extreme hardship for her. He did not explain when he became aware of the November 3, 1999, letter. He asked the Tax Commission to accept the 1997 amended Idaho return as timely filed because any delay in filing timely was due to reasonable cause.

The taxpayer was made aware of the error in the information provided to her for use in preparing her 1997 income tax returns just over a year after the original returns were filed. Yet the first request for a refund was not made until four years later--two years after the time allowed by Idaho Code for claiming a refund.

The records of the Tax Commission and the copy of the taxpayer's original 1997 state and federal returns show the taxpayer computed and paid a delinquency penalty and interest when she filed both returns after their due date. In addition, the taxpayer paid penalty and interest on the tax due to Idaho for filing her 1995 and 1996 income tax returns late.

Idaho Code § 63-3072 is clear and unequivocal. The language in this section ". . . shall be made. . ." is not discretionary, but rather, it is mandatory. The Tax Commission finds Idaho Code

§ 63-3072(c), cited above, is controlling with respect to the taxpayer's refund claim for tax year 1997.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.